

EXHIBIT B

RICHARD G. CAMPBELL JR., ESQ.
Nevada Bar #1832
BRET F. MEICH, ESQ
Nevada Bar #11208
ARMSTRONG TEASDALE LLP
3770 Howard Hughes Parkway, Suite 200
Las Vegas, Nevada 89169
Telephone: 702.678.5070
Facsimile: 702.878.9995
rcampbell@armstrongteasdale.com
bmeich@armstrongteasdale.com

ROBERT R. KRACHT, ESQ.
Ohio Bar #0025574
CHARLES J. PAWLUKIEWICZ, ESQ.
Ohio Bar #0011499
MCARTHY LEBIT CRYSTAL & LIFFMAN CO, L.P.A.
101 W. Prospect Avenue, Suite 1800
Cleveland, Ohio 44115
Telephone: 216.696.1422
rrk@mccarthylebit.com
cjp@mccarthylebit.com
Admitted Pro Hac Vice

*Attorneys for Plaintiffs Keehan
Tennessee Investment, LLC, et al.*

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

KEEHAN TENNESSEE INVESTMENT, LLC, et
al.,

Plaintiff,

vs.

GUARDIAN CAPITAL ADVISORS, INC., et al.

Defendant.

3:14-cv-00500-RCJ-WGC

**DECLARATION OF ANDREW S.
PERRY, ESQ. IN SUPPORT OF
OPPOSITION TO GUARDIAN
CAPITAL ADVISORS, INC.'S AND
KENNETH A. MILLER'S MOTION
TO DISMISS AMENDED
COMPLAINT**

I, Andrew S. Perry, Esq., hereby declare under penalty of perjury under the laws of the State of Ohio that the following assertions are true and correct to the best of my knowledge:

1. I am the attorney for the Keehan family and related entities and from December 2013 until April 2014, I was negotiating with the Defendants in this matter regarding several loan transactions and commitment letters. I in that capacity, I received numerous email

1 correspondences where I was either the addressee or carbon copied. The emails attached to
2 this Declaration are true and correct copies of emails that I was either the addressee, the
3 sender or provided a carbon copy.

4 **Exhibit 1.** Email string dated March 3, 2014 from Andrew Perry to Kenneth A. Miller
5 and from Alexa Guevara to Kenneth Miller regarding loan disbursements for \$2,995,000.00
6 Bridge Loan.

7 **Exhibit 2.** Email string from Kenneth Miller to Andrew Perry dated April 18, 2014
8 regarding TN Funding/email from Steve Fields.

9 **Exhibit 3.** Email dated April 21, 2014 from Kenneth Miller to Andrew Perry regarding
10 \$2,995,000.00 Loan.

11 **Exhibit 4.** Email dated April 23, 2014 from Kenneth A. Miller to Andrew Perry regarding
12 Need extension \$? What can I help with?

13 **Exhibit 5.** Email dated April 25, 2014 from Kenneth A. Miller to Andrew Perry regarding
14 Is There Anybody out There?????

15 I make this declaration under penalty and perjury of the laws of the United States and the state of
16 Ohio.

17
18
19 DATED this 11th day of December, 2014.

20 
21 Andrew S. Perry, Esq.
22
23
24
25
26
27
28

djkeehan@roadrunner.com; dave.keehan@adv-polymer.com; don.keehan@adv-polymer.com; denise.keehan@adv-polymer.com; bradfairfield@gmail.com; eallain@jmslaw.net

Subject: Re: Refinance Summary attached. Let me know if any changes need to be made. --Amy

Do we have a revised settlement statement. Full set of executed documents? I am on standby to wire fund.

George Cresson
237 Kearny Street #158
San Francisco, CA 94108
650-315-3366 (cell)

On Monday, March 3, 2014 4:21 PM, "Perry, Andrew S." <ASP@mccarthylebit.com> wrote:
I have not seen.

Andrew S. Perry
McCarthy, Lebit, Crystal & Liffman Co., LPA
101 W. Prospect Ave., Suite 1800
Cleveland, Ohio 44115

On Mar 3, 2014, at 7:13 PM, "george cresson" <vauxiii@yahoo.com> wrote:

do we have revised settlement statement yet?

George Cresson
237 Kearny Street #158
San Francisco, CA 94108
650-315-3366 (cell)

On Monday, March 3, 2014 2:24 PM, "Perry, Andrew S." <ASP@mccarthylebit.com> wrote:
Borrower gets \$50K. Awesome. Revise.

From: innovativetitle@aol.com [<mailto:innovativetitle@aol.com>]

Sent: Monday, March 03, 2014 5:22 PM

To: aguevara@mcdonaldhopkins.com; vauxiii@yahoo.com; Perry, Andrew S.; kmiller@guardiancapitaladvisors.com

Cc: djkeehan@roadrunner.com; dave.keehan@adv-polymer.com; don.keehan@adv-polymer.com; denise.keehan@adv-polymer.com; bradfairfield@gmail.com; eallain@jmslaw.net

Subject: Re: Refinance Summary attached. Let me know if any changes need to be made. --Amy

Innovative Title and Escrow Services, LLC
1440 Rockside Rd. Suite 310
Parma, OH 44134
Office: 216-635-0870
Fax: 216-635-0874

-----Original Message-----

From: Guevara, Alexa <aguevara@mcdonaldhopkins.com>

To: 'george cresson' <vauxiii@yahoo.com>; 'Perry, Andrew S.' <ASP@mccarthylebit.com>; 'Kenneth A. Miller' <kmiller@guardiancapitaladvisors.com>

Cc: 'innovativetitle@aol.com' <innovativetitle@aol.com>; DJ Keehan <dikeehan@roadrunner.com>; dave.keeahan <dave.keeahan@adv-polymer.com>; don.keeahan <don.keeahan@adv-polymer.com>; denise.keeahan <denise.keeahan@adv-polymer.com>; Brad Fairfield <bradfairfield@gmail.com>
Sent: Mon, Mar 3, 2014 5:18 pm
Subject: RE: Settlement Statement

Yes. We should be in good shape as to title.

Alexa Guevara
Attorney

<image001.jpg>

T: 561.472.2964
F: 561.472.2122
aguevara@mcdonaldhopkins.com
businessadvocate@mcdonaldhopkins.com

Flagler Center Tower
505 Flagler Drive
Suite 300
West Palm Beach, FL 33401

Chicago • Cleveland • Columbus • Detroit • Miami • West Palm Beach

From: george cresson [<mailto:vauxiii@yahoo.com>?]
Sent: Monday, March 03, 2014 5:17 PM
To: Guevara, Alexa; 'Perry, Andrew S.'; 'Kenneth A. Miller'
Cc: 'innovativetitle@aol.com'; DJ Keehan; dave.keeahan@adv-polymer.com; don.keeahan@adv-polymer.com; denise.keeahan@adv-polymer.com; Brad Fairfield
Subject: Re: Settlement Statement

and is the title company insuring title on the late additions to the title policy?

George Cresson
237 Kearny Street #158
San Francisco, CA 94108
650-315-3366 (cell)

On Monday, March 3, 2014 1:49 PM, "Guevara, Alexa" <aguevara@mcdonaldhopkins.com> wrote:
Group

FYI—The title and escrow figures will be changing to reflect actual recording fees for the approved recordable closing documents and the increase in the loan amount.

Alexa

Alexa Guevara
Attorney

<image001.jpg>

T: 561.472.2964
F: 561.472.2122
aguevara@mcdonaldhopkins.com
businessadvocate@mcdonaldhopkins.com

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505 Flagler Drive
Suite 300
West Palm Beach, FL 33401

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From: Perry, Andrew S. [<mailto:ASP@mccarthylebit.com>]
Sent: Monday, March 03, 2014 3:52 PM
To: 'Kenneth A. Miller'; 'vauxiii@yahoo.com'
Cc: Guevara, Alexa; 'innovativetitle@aol.com'; DJ Keehan; dave.keehan@adv-polymer.com; don.keehan@adv-polymer.com; denise.keehan@adv-polymer.com; Brad Fairfield
Subject: RE: Settlement Statement

Ken/George: What is the break down for the \$97K and the \$63K in due diligence / legal fees as opposed to the \$27.5K in legal fees for MH?

From: Guevara, Alexa [<mailto:aguevara@mcdonaldhopkins.com>]
Sent: Monday, March 03, 2014 3:46 PM
To: 'Kenneth A. Miller'; 'innovativetitle@aol.com'
Cc: Perry, Andrew S.; 'vauxiii@yahoo.com'
Subject: RE: Settlement Statement

Group

I misspoke, the \$32,050.30 figure already reflects the actual cost of title and escrow and the final payoff figures. The Loan Agreement will need to be updated to be consistent with the Settlement Agreement once we have an agreement on figures.

Thanks,

Alexa

Alexa Guevara
Attorney

<image001.jpg>

T: 561.472.2964
F: 561.472.2122
aguevara@mcdonaldhopkins.com
businessadvocate.mcdonaldhopkins.com
Flagler Center Tower
505 Flagler Drive
Suite 300
West Palm Beach, FL 33401

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From: Guevara, Alexa
Sent: Monday, March 03, 2014 3:42 PM
To: 'Kenneth A. Miller'; mailto:innovativetitle@aol.com
Cc: "Perry, Andrew S."; mailto:vauxiii@yahoo.com
Subject: RE: Settlement Statement

Group

Please see the down and dirty disbursement schedule I have prepared below based on the Loan Agreement and the most recent settlement statement circulated by the title company. Based on the numbers so far, I believe we have another \$32,050.30 (\$2,995,000.00-\$2,962,949.70) by which we can increase the disbursement. We also can increase the disbursement to the Borrower by reflecting the actual title and escrow costs and the actual amount required to pay off all existing mortgages and taxes on the mortgaged properties. George and Ken, as this is more in the business and not the legal arena, you will ultimately have to approve the closing statement.

TOTAL CASH IN	\$ 2,995,000.00

CASH OUT:	
Payoff mortgages and taxes (LA No. 9)	\$ 1,389,714.70
Lien Searches	\$ 1,000.00
Title Exam	\$ 1,750.00
Binder	\$ 300.00
CPL	\$ 120.00
Est. Recording CR	\$ 360.00
Est. Recording RO	\$ 472.00
Est. Recording GR	\$ 388.00
Title premiums	\$ 9,845.00
Cash to Borrower (LA No.1)	\$ 500,000.00
Origination Fee (LA No. 2)	\$ 190,000.00
Lender reimbursement (LA No. 3)	\$ 97,000.00
3d party lender fee (LA No. 4)	\$ 528,000.00
Guardian Fee (LA No. 5)	\$ 103,000.00
Lender reimbursements (LA No. 6)	\$ 63,000.00
Guardian fee (LA No. 7)	\$ 35,000.00
Fairfield fee(LA No. 7)	\$ 15,000.00
MH Fees	\$ 27,500.00
MH Costs	\$ 500.00
TOTAL CASH OUT *	\$ 2,962,949.70

*Does not include Items 8 and 9 from the Loan Agreement as those figures have already been included in the title company's disbursement statement. I will need to change the loan agreement to reflect that the \$24,000 fee for title and escrow will be paid to title company to lender and to reflect the actual amount of title and escrow fees.

Alexa Guevara
Attorney

<image001.jpg>

T: 561.472.2964
F: 561.472.2122
aguevara@mcdonaldhopkins.com
businessadvocate@mcdonaldhopkins.com

Flagler Center Tower
505 Flagler Drive
Suite 300
West Palm Beach, FL 33401

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From: Kenneth A. Miller [<mailto:kmiller@guardiancapitaladvisors.com>]
Sent: Monday, March 03, 2014 2:24 PM
To: Guevara, Alexa; <mailto:innovativetitle@aol.com>
Cc: "Perry, Andrew S."; <mailto:vauxiii@yahoo.com>
Subject: RE: Settlement Statement

Amy,

Appropriate instruction from Borrower and Lender required, but please amend the below to reflect a \$15,000 reduction to the "\$50,000 to Guardian as a fee for, and the reimbursement of expenses related

to,....." and \$15,000 payment to Fairfield Holdings, LLC, the borrowers agent. Wire info below as provided by Mr. Fairfield.

Thanks,
Ken

**Bradley J. Fairfield
Fairfield Holdings LLC
32142 Ventanas Circle
Avon Lake, OH 44012**

Routing: 044000024

Acct: 01661976384

Thank you and please let me know if you have any problems.

Best,

Brad

Ken Miller
415-371-0700 office
415-516-0538 cell
kmiller@guardiancapitaladvisors.com

From: Guevara, Alexa [<mailto:aguevara@mcdonaldhopkins.com>]
Sent: Monday, March 03, 2014 10:34 AM
To: 'innovativetitle@aol.com' (innovativetitle@aol.com)
Cc: 'Perry, Andrew S.' (ASP@mccarthylebit.com); Arfons, Chad; 'George Cresson' (vauxiii@yahoo.com) (vauxiii@yahoo.com); Kenneth A. Miller (kmiller@guardiancapitaladvisors.com) (kmiller@guardiancapitaladvisors.com)
Subject: Settlement Statement

Amy

Below are the fees from the Loan Agreement which the parties are still negotiating. In the interest of time, I am providing them to you so you can reflect them on the Settlement Statement for the time being. We will confirm, or provide you revised figures, as soon as an agreement is reached.

1. \$500,000.00 for Borrower's acquisition of partnership interest related to Stillwater Property. (Item 1);
2. \$190,000.00 to Lender as a fee for origination of the Loan (Item 2);
3. \$97,000.00 to Lender as a fee for, and the reimbursement of expenses related to, legal, underwriting and due diligence services related to same. (Item 3);
4. \$528,000.00 to third party lender as a fee for entering into that certain construction loan commitment related to the Stillwater Property;
5. \$103,000.00 to Guardian Capital Advisors as a fee in connection with making and arranging a commitment from an unrelated third party lender to make a senior loan related to the Stillwater Property which loan Borrower promises shall, upon origination, pay the Loan in full. (Item 5);
6. \$63,000.00 to Lender as a fee for, and the reimbursement of expenses related to, the legal, underwriting and due diligence services related to the Construction Loan Commitment and loan related thereto. (Item 6);

7. \$50,000.00 to Guardian as a fee for, and the reimbursement of expenses related to, the legal, underwriting and due diligence services related to the third party lender commitment to make a senior loan related to the Stillwater Property loan related thereto. (Item 7);
8. \$24,000.00 to Lender for escrow and title related costs (Item 8);
9. \$1,400,000 for payment to retire all liens related to the Collateral (Item 9).

Also, please include the following line items:

Attorneys Fees: \$27,500.00

Costs of UCC Filings (Post-closing): \$500.00

Please don't hesitate to call with any questions.

Alexa

Alexa Guevara
Attorney

<image001.jpg>

T: 561.472.2964

F: 561.472.2122

aguevara@mcdonaldhopkins.com

businessadvocate@mcdonaldhopkins.com

Flagler Center Tower

505 Flagler Drive

Suite 300

West Palm Beach, FL 33401

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Andrew

Can we also approve the Subordination of Mortgages?

Amy

Please confirm you have the signature pages for the ALRs, Mortgages and the Subordination?

Thanks.

Alexa

Alexa Guevara
Attorney
MCDONALD HOPKINS LLC

Flagler Center Tower
505 Flagler Drive
Suite 300
West Palm Beach, FL 33401
T: 561.472.2964
F: 561.472.2122
<mailto:aguevara@mcdonaldhopkins.com>
<http://www.mcdonaldhopkins.com/>

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-----Original Message-----

From: Perry, Andrew S. [<mailto:ASP@mccarthylebit.com>]

Sent: Monday, March 03, 2014 3:24 PM

To: Guevara, Alexa

Cc: DJ Keehan; Arfons, Chad; dave.keeahan@adv-polymer.com;
kmiller@guardiancapitaladvisors.com; don.keeahan@adv-polymer.com; denise.keeahan@adv-polymer.com; 'innovativetitle@aol.com' (innovativetitle@aol.com)

Subject: Re: Non - Real Estate Loan Documents

Ok

Andrew S. Perry
McCarthy, Lebit, Crystal & Liffman Co., LPA
101 W. Prospect Ave., Suite 1800
Cleveland, Ohio 44115

> On Mar 3, 2014, at 3:15 PM, "Guevara, Alexa" <aguevara@mcdonaldhopkins.com> wrote:

>

> Group

>

> Attached are clean versions of the Mortgages and ALRs reflecting the information Andrew previously provided. I believe the outstanding issues on the loan documents relate to the loan agreement and guaranties. Therefore, can we approve these forms so the title company can assemble execution sets in anticipation of closing?

>

> Alexa

>

> Alexa Guevara

> Attorney

>
> T: 561.472.2964
> F: 561.472.2122
> aguevara@mcdonaldhopkins.com<<mailto:aguevara@mcdonaldhopkins.com>>
> businessadvocate.mcdonaldhopkins.com<<https://businessadvocate.mcdonaldhopkins.com/>>
>
> [cid:image001.jpg@01CF36F3.37350C50]<<http://www.mcdonaldhopkins.com/>>
>
> Flagler Center Tower
> 505 Flagler Drive
> Suite 300
> West Palm Beach, FL 33401
>
> Chicago * Cleveland * Columbus * Detroit * Miami * West Palm Beach
> From: Perry, Andrew S. [<mailto:ASP@mccarthylebit.com>]
> Sent: Monday, March 03, 2014 2:02 PM
> To: Guevara, Alexa
> Cc: DJ Keehan; Arfons, Chad; dave.keeahan@adv-polymer.com;
kmiller@guardiancapitaladvisors.com; don.keeahan@adv-polymer.com; denise.keeahan@adv-polymer.com; 'innovativetitle@aol.com' (innovativetitle@aol.com)
> Subject: RE: Non - Real Estate Loan Documents
>
> Tax ID number Keehan Trust Funding: 45-4292662, organizational number: 2074809
>
> Property Addresses:
> 951 Jaycox Rd., Avon, Ohio - 951 Realty Ltd.
> 827 Robinson Dr., Lagrange, Ohio - 951 Realty Ltd.
> US Grant Street, Lagrange, Ohio - Durham Ridge Investments, LLC
> 3455, 3463, 3467 Briar Ridge, Westlake, Ohio - Westlake Briar, LLC
>
> Mortgagor organizational numbers:
> Westlake Briar: 2174206
> Durham Ridge: 1190198
> 951 Realty: 1312021
>
>
>
>
> From: Guevara, Alexa [<mailto:aguevara@mcdonaldhopkins.com>]
> Sent: Monday, March 03, 2014 1:14 PM
> To: Perry, Andrew S.
> Cc: DJ Keehan; Arfons, Chad; dave.keeahan@adv-polymer.com<<mailto:dave.keeahan@adv-polymer.com>>; kmiller@guardiancapitaladvisors.com<<mailto:kmiller@guardiancapitaladvisors.com>>; don.keeahan@adv-polymer.com<<mailto:don.keeahan@adv-polymer.com>>; denise.keeahan@adv-polymer.com<<mailto:denise.keeahan@adv-polymer.com>>; 'innovativetitle@aol.com' (innovativetitle@aol.com<<mailto:innovativetitle@aol.com>>)
> Subject: RE: Non - Real Estate Loan Documents
>
> Andrew
>
> Attached are blacklines reflecting the changes made to the loan document to reflect the comments

from the lender. Please note:

- >
- > 1. For the guaranties, , I have included a blackline for David Keehan's guaranty since the same changes were made to the other guaranties. The same applies to the assignment of leases and rents, the mortgages and the environmental indemnity agreements.
- > 2. I need the Organizational Number for each Mortgagor to include in the mortgages.
- > 3. I need the Tax ID No. and the Organizational Number for Keehan Trust Funding for the Security Agreement.
- > 4. I need the address(es) for each mortgaged property so they can be reflected on the Assignments of Leases and Rents.
- >
- > Assuming the changes are acceptable, I will circulate clean versions of the documents to Amy. Amy will need to assemble and circulate copies so the parties can confirm that the signature pages were attached to the correct versions.
- >
- > Alexa
- >
- > Alexa Guevara
- > Attorney
- >
- > T: 561.472.2964
- > F: 561.472.2122
- > aguevara@mcdonaldhopkins.com<<mailto:aguevara@mcdonaldhopkins.com>>
- > businessadvocate.mcdonaldhopkins.com<<http://businessadvocate.mcdonaldhopkins.com/>>
- >
- > [cid:image001.jpg@01CF36F3.37350C50]<<http://www.mcdonaldhopkins.com/>>
- >
- > Flagler Center Tower
- > 505 Flagler Drive
- > Suite 300
- > West Palm Beach, FL 33401
- >
- > Chicago * Cleveland * Columbus * Detroit * Miami * West Palm Beach
- > From: Arfons, Chad
- > Sent: Monday, March 03, 2014 12:52 PM
- > To: 'Perry, Andrew S.';
- > kmiller@guardiancapitaladvisors.com<<mailto:kmiller@guardiancapitaladvisors.com>>;
- > 'innovativetitle@aol.com' (innovativetitle@aol.com<<mailto:innovativetitle@aol.com>>)
- > Cc: DJ Keehan; dave.keehan@adv-polymer.com<<mailto:dave.keehan@adv-polymer.com>>;
- > don.keehan@adv-polymer.com<<mailto:don.keehan@adv-polymer.com>>; denise.keehan@adv-polymer.com<<mailto:denise.keehan@adv-polymer.com>>; Guevara, Alexa
- > Subject: RE: Non - Real Estate Loan Documents
- >
- > Andrew:
- >
- > The name of the lender entity has changed. We are making the changes to the documents now. Additionally there are some other minor changes that we are making. Also, the settlement statement needs to be revised to include the various fees being paid out of the loan proceeds. We are working on that as well.
- >
- > Note, please copy Alexa on the emails today as she is working on this too.

>
> Thank you,
>
> Chad
>
> Chad Arfons
> Member
>
> T: 216.348.5455
> carfons@mcdonaldhopkins.com<<mailto:carfons@mcdonaldhopkins.com>>
> businessadvocate.mcdonaldhopkins.com<<https://businessadvocate.mcdonaldhopkins.com/>>
>
> [cid:image001.jpg@01CF36F3.37350C50]<<http://www.mcdonaldhopkins.com/>>
>
> 600 Superior Avenue
> Suite 2100
> Cleveland, OH 44114
>
> Chicago * Cleveland * Columbus * Detroit * Miami * West Palm Beach
> From: Perry, Andrew S. [<mailto:ASP@mccarthylebit.com>]
> Sent: Monday, March 03, 2014 12:34 PM
> To: Arfons, Chad;
> kmiller@guardiancapitaladvisors.com<<mailto:kmiller@guardiancapitaladvisors.com>>;
> 'innovativetitle@aol.com' (innovativetitle@aol.com<<mailto:innovativetitle@aol.com>>)
> Cc: DJ Keehan; dave.keeahan@adv-polymer.com<<mailto:dave.keeahan@adv-polymer.com>>;
> don.keeahan@adv-polymer.com<<mailto:don.keeahan@adv-polymer.com>>; denise.keeahan@adv-polymer.com<<mailto:denise.keeahan@adv-polymer.com>>
> Subject: Non - Real Estate Loan Documents
>
> Chad/Ken: Attached are copies of the non-real estate loan documents. The real estate documents were sent by courier to Amy and if not there, they should be there very soon.
>
> As far as I know there are two things missing: (1) the Security Agreement, (2) finalization of the \$3.5M construction loan term sheet, (3) finalization of the senior facility term sheet. Once those are in place I believe Borrower will be ready to close.
>
> Once I have the foregoing in effect we will hand deliver the items attached above.
>
> Andrew S. Perry, Esq.
> McCarthy, Lebit, Crystal & Liffman, Co., L.P.A.
> 101 Prospect, W., Suite 1800
> Cleveland, Ohio 44115-1088
> (216) 916-8370 Direct
> (216) 916-8378 Direct Fax
> (216) 696-1422 Office
> (216) 736-7967 Office Fax
> E-mail: asp@mccarthylebit.com<<mailto:asp@mccarthylebit.com>>
> McCarthy, Lebit, Crystal & Liffman Co., L.P.A.
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>

>

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>

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>

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> <image001.jpg>

> <ALR Keehan-Durham (4730709-2x7AB84).doc>

> <ALR Keehan-Westlake (4730706-2x7AB84).doc>

> <ALR Keehan-Jaycox office-951 Realty (4730707-3x7AB84).doc>

> <Keehan Mortgage-Durham Ridge Golf Course (4730691-3x7AB84).doc>

> <Keehan Mortgage-office building Jaycox (4730692-3x7AB84).doc>

> <Keehan Mortgage-Westlake (4726293-3x7AB84).doc>

Group

Attached are clean versions of the Mortgages and ALRs reflecting the information Andrew previously provided. I believe the outstanding issues on the loan documents relate to the loan agreement and guaranties. Therefore, can we approve these forms so the title company can assemble execution sets in anticipation of closing?

Alexa

Alexa Guevara
Attorney

T: 561.472.2964
F: 561.472.2122
aguevara@mcdonaldhopkins.com
businessadvocate@mcdonaldhopkins.com

McDonald Hopkins

A business advisory and advocacy law firm®

Business Advocate
a community for collaboration

**Flagler Center Tower
505 Flagler Drive
Suite 300
West Palm Beach, FL 33401**

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From: Perry, Andrew S. [mailto:ASP@mccarthylebit.com]

Sent: Monday, March 03, 2014 2:02 PM

To: Guevara, Alexa

Cc: DJ Keehan; Arfons, Chad; dave.keehan@adv-polymer.com; kmiller@guardiancapitaladvisors.com; don.keehan@adv-polymer.com; denise.keehan@adv-polymer.com; 'innovativetitle@aol.com' (innovativetitle@aol.com)

Subject: RE: Non - Real Estate Loan Documents

Tax ID number Keehan Trust Funding: 45-4292662, organizational number: 2074809

Property Addresses:

951 Jaycox Rd., Avon, Ohio – 951 Realty Ltd.

827 Robinson Dr., Lagrange, Ohio – 951 Realty Ltd.

US Grant Street, Lagrange, Ohio – Durham Ridge Investments, LLC

3455, 3463, 3467 Briar Ridge, Westlake, Ohio – Westlake Briar, LLC

Mortgagor organizational numbers:

Westlake Briar: 2174206

Durham Ridge: 1190198

951 Realty: 1312021

From: Guevara, Alexa [mailto:aguevara@mcdonaldhopkins.com]

Sent: Monday, March 03, 2014 1:14 PM

To: Perry, Andrew S.

Cc: DJ Keehan; Arfons, Chad; mailto:dave.keehan@adv-polymer.com; mailto:kmiller@guardiancapitaladvisors.com; mailto:don.keehan@adv-polymer.com; denise.keehan@adv-polymer.com; 'innovativetitle@aol.com' (innovativetitle@aol.com)

Subject: RE: Non - Real Estate Loan Documents

Andrew

Attached are blacklines reflecting the changes made to the loan document to reflect the comments from the lender. Please note:

1. For the guaranties, , I have included a blackline for David Keehan's guaranty since the same changes were made to the other guaranties. The same applies to the assignment of leases and rents, the mortgages and the environmental indemnity agreements.
2. I need the Organizational Number for each Mortgagor to include in the mortgages.
3. I need the Tax ID No. and the Organizational Number for Keehan Trust Funding for the Security Agreement.
4. I need the address(es) for each mortgaged property so they can be reflected on the Assignments of Leases and Rents.

Assuming the changes are acceptable, I will circulate clean versions of the documents to Amy. Amy will need to assemble and circulate copies so the parties can confirm that the signature pages were attached to the correct versions.

Alexa

Alexa Guevara
Attorney

McDonald Hopkins

A business advisory and advocacy law firm®

 **Business Advocate**
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T: 561.472.2964
F: 561.472.2122
aguevara@mcdonaldhopkins.com
businessadvocate.mcdonaldhopkins.com

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505 Flagler Drive
Suite 300
West Palm Beach, FL 33401

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From: Arfons, Chad

Sent: Monday, March 03, 2014 12:52 PM

To: 'Perry, Andrew S.'; <mailto:kmiller@guardiancapitaladvisors.com>; 'innovativetitle@aol.com' (innovativetitle@aol.com)

Cc: DJ Keehan; dave.keeahan@adv-polymer.com; don.keeahan@adv-polymer.com; mailto:denise.keeahan@adv-polymer.com; Guevara, Alexa

Subject: RE: Non - Real Estate Loan Documents

Andrew:

The name of the lender entity has changed. We are making the changes to the documents now. Additionally there are some other minor changes that we are making. Also, the settlement statement needs to be revised to include the various fees being paid out of the loan proceeds. We are working on that as well.

Note, please copy Alexa on the emails today as she is working on this too.

Thank you,

Chad

Chad Arfons
Member

McDonald Hopkins

A business advisory and advocacy law firm®

 **Business Advocate**
a community for collaboration

T: 216.348.5455
carfons@mcdonaldhopkins.com
businessadvocate.mcdonaldhopkins.com

600 Superior Avenue
Suite 2100
Cleveland, OH 44114

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From: Perry, Andrew S. [<mailto:ASP@mccarthylebit.com>]

Sent: Monday, March 03, 2014 12:34 PM

To: Arfons, Chad; kmiller@guardiancapitaladvisors.com; 'innovativetitle@aol.com' (innovativetitle@aol.com)

Cc: DJ Keehan; dave.keeahan@adv-polymer.com; don.keeahan@adv-polymer.com; mailto:denise.keeahan@adv-polymer.com

Subject: Non - Real Estate Loan Documents

Chad/Ken: Attached are copies of the non-real estate loan documents. The real estate documents were sent by courier to Amy and if not there, they should be there very soon.

As far as I know there are two things missing: (1) the Security Agreement, (2) finalization of the \$3.5M construction loan term sheet, (3) finalization of the senior facility term sheet. Once those are in place I believe Borrower will be ready to close.

Once I have the foregoing in effect we will hand deliver the items attached above.

Andrew S. Perry, Esq.

McCarthy, Lebit, Crystal & Liffman, Co., L.P.A.

101 Prospect, W., Suite 1800

Cleveland, Ohio 44115-1088

(216) 916-8370 Direct

(216) 916-8378 Direct Fax

(216) 696-1422 Office

(216) 736-7967 Office Fax

E-mail: asp@mccarthylebit.com

McCarthy, Lebit, Crystal & Liffman Co., L.P.A.

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Pawlukiewicz, Charles J.

From: Kenneth A. Miller <kmiller@guardiancapitaladvisors.com>
Sent: Friday, April 18, 2014 3:42 PM
To: Perry, Andrew S.; Russell Harwell; Arfons, Chad; 'George Cresson';
djkeehan@roadrunner.com; Charles Morton; 'Emily Hatch Bowman'
Subject: FW: TN funding email from Steve Fields

Folks,

Please see below email thread. Mr. Fields is crossing into blowhard territory. I propose that Russell Harwell speak with Mr. Fields lawyer Glenn Civits. They are friends and they share credibility. This transaction should get done next week in a rolling closing of sorts, but it will absolutely positively not be done on Monday. Obviously, Mr. Fields will not be allowed to sell the property on Thursday morning or too hold up the transaction with a seven figure ransom.

Mr. Fields counsel needs to be reminded of the very significant risks to TN-Fore in the event of a bankruptcy proceeding. As if his email below were needed to further confirm the obvious, Mr. Fields' debt looks like, talks like, walks like equity. Such a characterization is potentially catastrophic in bankruptcy court. And to the extent that some of TN-fore's investment is equity, that equity owes a duty to its partners. And this doesn't begin to address other issues obvious to a non-lawyer like me; no lender in the world would act the way he is acting. Mr. Field may be a lot of things, but I don't think he's a suicide bomber.

Andrew, how to handle this is your call, but I recommend a chat between Adams and Reese and the Fields' counsel. The outcome of that conversation must be a postponement of the sale. It will do no one any good to be playing chicken with these folks on Wednesday night, and it might even worsen Mr. Fields position.

I'm chained to my desk all day if anybody needs me.

Yours,
Ken

Ken Miller
415-371-0700 office
415-516-0538 cell
kmiller@guardiancapitaladvisors.com

From: Steve [<mailto:steve@fields-realty.com>]
Sent: Friday, April 18, 2014 11:59 AM
To: 'Kenneth A. Miller'
Cc: 'Kim Fields'
Subject: RE: TN funding

Not necessary to speak, get the money funded and wired to be received and confirmed on our end by close of business for East Coast banks on Monday and we will close. Anything less than that and we will not accept any buyout deal. I have a scheduled flight to Nashville on Tuesday that I will not cancel unless this happens on Monday. If I get on that flight, my number to get out goes up by millions.

Steve Fields
Fields Realty
7412 Stonegate Blvd.
Parkland, FL 33076
954-752-0560 Cell 516-633-0220

Pawlukiewicz, Charles J.

From: Kenneth A. Miller <kmiller@guardiancapitaladvisors.com>
Sent: Monday, April 21, 2014 5:42 PM
To: Perry, Andrew S.
Cc: dave.keehan@adv-polymer.com; 'DJ Keehan'; 'Brad Fairfield'
Subject: RE: \$2.995M Loan

Good afternoon, Sunshine! Methinks it's the interest and therefore you get a corresponding credit for the same amount.

Ken

Ken Miller
415-371-0700 office
415-516-0538 cell
kmiller@guardiancapitaladvisors.com

From: Perry, Andrew S. [<mailto:ASP@mccarthylebit.com>]
Sent: Monday, April 21, 2014 2:29 PM
To: kmiller@guardiancapitaladvisors.com
Cc: dave.keehan@adv-polymer.com; 'DJ Keehan'; Brad Fairfield
Subject: \$2.995M Loan

Ken: To add further insult to injury I am told that George has now decided to add an additional \$448,500 in prepaid interest, to the settlement statement to make his loan payoff \$3.5M.

Because the parties were the same you indicated that we would not have any issues having this paid off from the big loan.

You have indicated to David and DJ that the Keehans would not be coming out of pocket at closing.

With at further amount added and an additional God awful amount of unspecified legal fees coming out this will need to be handled accordingly.

Andrew S. Perry, Esq.
McCarthy, Lebit, Crystal & Liffman, Co., L.P.A.
101 Prospect, W., Suite 1800
Cleveland, Ohio 44115-1088
(216) 916-8370 Direct
(216) 916-8378 Direct Fax
(216) 696-1422 Office
(216) 736-7967 Office Fax
E-mail: asp@mccarthylebit.com
www.mccarthylebit.com

McCarthy, Lebit, Crystal & Liffman Co., L.P.A.

Confidential Communication

Pawlukiewicz, Charles J.

From: Kenneth A. Miller <kmiller@guardiancapitaladvisors.com>
Sent: Wednesday, April 23, 2014 11:32 AM
To: Perry, Andrew S.; djkeehan@roadrunner.com
Subject: need extention \$? What can I help with?

Ken Miller
415-371-0700 office
415-516-0538 cell
kmiller@guardiancapitaladvisors.com

From: Perry, Andrew S. [<mailto:ASP@mccarthylebit.com>]
Sent: Wednesday, April 23, 2014 8:22 AM
To: Kenneth A. Miller
Subject: RE: please call miller when convenient

Working on foreclosure issues. No time.

From: Kenneth A. Miller [<mailto:kmiller@guardiancapitaladvisors.com>]
Sent: Wednesday, April 23, 2014 11:21 AM
To: Perry, Andrew S.
Subject: please call miller when convenient

Ken Miller
Guardian Capital Advisors, Inc.
415-371-0700 Direct
415-409-3232 Main
415-516-0538 cell
kmiller@guardiancapitaladvisors.com

Pawlukiewicz, Charles J.

From: Kenneth A. Miller <kmiller@guardiancapitaladvisors.com>
Sent: Wednesday, April 23, 2014 11:33 AM
To: Perry, Andrew S.; djeehan@roadrunner.com
Cc: Brad Fairfield
Subject: RE: need extension \$? What can I help with?

Forgot to copy Brad.

Ken Miller
415-371-0700 office
415-516-0538 cell
kmiller@guardiancapitaladvisors.com

From: Kenneth A. Miller [<mailto:kmiller@guardiancapitaladvisors.com>]
Sent: Wednesday, April 23, 2014 8:32 AM
To: 'Perry, Andrew S.'; djeehan@roadrunner.com
Subject: need extension \$? What can I help with?

Ken Miller
415-371-0700 office
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kmiller@guardiancapitaladvisors.com

From: Perry, Andrew S. [<mailto:ASP@mccarthyebit.com>]
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Ken Miller
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415-409-3232 Main
415-516-0538 cell
kmiller@guardiancapitaladvisors.com

Pawlukiewicz, Charles J.

From: Kenneth A. Miller <kmiller@guardiancapitaladvisors.com>
Sent: Friday, April 25, 2014 6:57 PM
To: Perry, Andrew S.
Subject: RE: Is there anybody out there?????

Congrats. We work weekends, too. What are we working on, what's changing, and what's the timeline?

Ken Miller
415-371-0700 office
415-516-0538 cell
kmiller@guardiancapitaladvisors.com

From: Perry, Andrew S. [<mailto:ASP@mccarthylebit.com>]
Sent: Friday, April 25, 2014 3:38 PM
To: Kenneth A. Miller
Subject: Re: Is there anybody out there?????

Stopped the foreclosure. Long weekend ahead. Will have more next week.

Andrew S. Perry
McCarthy, Lebit, Crystal & Liffman Co., LPA
101 W. Prospect Ave., Suite 1800
Cleveland, Ohio 44115

On Apr 25, 2014, at 6:28 PM, "Kenneth A. Miller" <kmiller@guardiancapitaladvisors.com> wrote:

Granted the subject line would be better with a link to that Pink Floyd sound track. You know where to find me.

Thanks,
Ken

Ken Miller
Guardian Capital Advisors, Inc.
415-371-0700 Direct
415-409-3232 Main
415-516-0538 cell
kmiller@guardiancapitaladvisors.com

Pawlukiewicz, Charles J.

From: Kenneth A. Miller <kmiller@guardiancapitaladvisors.com>
Sent: Friday, April 25, 2014 9:44 PM
To: Perry, Andrew S.; djkeehan@roadrunner.com
Subject: RE: Is there anybody out there?????

Hello Andrew and DJ,

We want to mindful of the pressures you're under, but you are leaving us with the impression that you are intentionally not moving this transaction over the finish line. Our impression is based on the fact that you haven't been returning the phone calls of Davidson Kempner representatives and that you have avoided articulating what needs to be completed even after obtaining an extension from the foreclosing lender. We have a limited window to complete this transaction and strongly advise you not to let any more time slip away if you want us to be your source of funds.

Yours,
Ken

Ken Miller
415-371-0700 office
415-516-0538 cell
kmiller@guardiancapitaladvisors.com

From: Perry, Andrew S. [<mailto:ASP@mccarthylebit.com>]
Sent: Friday, April 25, 2014 3:38 PM
To: Kenneth A. Miller
Subject: Re: Is there anybody out there?????

Stopped the foreclosure. Long weekend ahead. Will have more next week.

Andrew S. Perry
McCarthy, Lebit, Crystal & Liffman Co., LPA
101 W. Prospect Ave., Suite 1800
Cleveland, Ohio 44115

On Apr 25, 2014, at 6:28 PM, "Kenneth A. Miller" <kmiller@guardiancapitaladvisors.com> wrote:

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Ken

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kmiller@guardiancapitaladvisors.com